

Present were: Brown (Chair); McDonough (Acting Clerk); Bargnesi and Boness, Members; and Oltman (Associate Member).

The meeting opened at 7:03 p.m. (Boness arrived at 7:14 p.m.)

Petition No.: 4054  
Premises affected: 75 Essex Street  
Petitioner: First Integrity Mortgage  
Members: Brown, McDonough, Bargnesi, Oltman

No one was present to present the Petitioners' request to withdraw the petition. Brown noted that no one was present at the October 3, 2013 meeting regarding this petition and that the hearing was never opened. The Petitioners have apparently determined that zoning relief is not needed. McDonough made a motion to allow the petition to be withdrawn. Bargnesi seconded the motion and the Board voted (4-0) to allow withdrawal of the petition.

Petition No.: 4047  
Premises affected: 138 Chandler Rd  
Petitioner: New Cingular Wireless  
Members: Brown, McDonough, Bargnesi, Oltman

Petitioner's counsel had submitted a letter to request the public hearing be continued to 12/5/13. Bargnesi made a motion to continue the hearing to 12/5/13. McDonough seconded the motion and the Board voted (4-0) to continue the hearing to 12/5/13.

Approval of Minutes:

9/12/13, 6:30 pm meeting: McDonough made a motion to approve the minutes as drafted. Bargnesi seconded the motion and the Board voted (4-0) to approve the minutes as drafted.

9/12/13, 7 pm meeting: McDonough made a motion to approve the minutes as drafted. Bargnesi seconded the motion and the Board voted (4-0) to approve the minutes as drafted.

[Member Boness arrived and participated in the balance of the meeting.]

10/3/13, 6:30 pm meeting: Bargnesi made a motion to approve the minutes as drafted. Oltman seconded the motion and the Board voted (5-0) to approve the minutes as drafted.

10/3/13, 7 pm meeting: Bargnesi made a motion to approve the minutes as drafted. Oltman seconded the motion and the Board voted (5-0) to approve the minutes as drafted.

Petition No.: 4057  
Premises affected: 2 Allen Street  
Petitioner: Bedrosian  
Members: Brown, Bargnesi, Boness, Oltman

Brown explained to the petitioner, Sandra Bedrosian, that Member Magenheimer was not present and that she can proceed with a 4-member Board if she chooses. The Board must vote unanimously to approve the requested relief in order for it to pass. Mrs. Bedrosian agreed to proceed with a 4-member Board and presented the requested certified plot plan. She reminded the Board that the house was built in 1867, pre-dating zoning. The proposed porch extension faces Allen Street, a dead end private way. The existing porch is 5'x15.2' and the proposed is 13'x15.2'. The setback to the edge of pavement is 23' and 40' to the center of the private way, leaving a 12.9' setback on Allen St. Oltman made a

motion to waive the site view. Boness seconded the motion and the Board voted (4-0) to waive a site view. The Board then proceeded to deliberate. Brown noted that on the Allen St / private way frontage the non-conformity is being increased by further encroaching into the setback, therefore a variance is necessary. He added that the small lot and the location of the house on the lot decreases alternate locations for a conforming addition, thus constituting a hardship. Boness made a motion to grant a variance and to find that the hardship is related to the extremely small lot size and the location of the house on the lot with the condition that the addition is constructed in conformity with the certified plot plan. Bargnesi seconded the motion. Boness also made a motion to deny the special permit as moot. Oltman seconded the motion. The Board voted (5-0) to grant the variance with condition and deny the special permit as moot. Oltman will write the decision.

Petition No.: 4053

Premises affected: 94 Woburn Street

Petitioner: ACT

Members: Brown, Bargnesi, Boness, Oltman

Chair Brown explained that a comprehensive permit requires only a simple majority in order to be approved and the 4 members of the Board can proceed with the public hearing if the applicant agrees. Susan Stott, 30 Pasho St., Andover, ACT's Executive Director, agreed to a 4-member Board. She summarized what has occurred since the last meeting: Conservation Director Bob Douglas submitted a statement via email that no Conservation Commission filing is necessary; the 6' fence has been shown on the site plan; the IDR memo was submitted; a draft decision was submitted. Stott noted that it was based on the North Street comp permit decision, but condition #16 regarding underground utilities was changed to reflect that Woburn Street will have overhead utilities. Brown suggested striking the condition since it is not necessary. Stott agreed to strike condition #16. She pointed out that the school year dates were changed on page 2 based on the construction schedule of the vocational school. Brown noted the need to change the date of the revised site plan on page 2. Stott agreed. There being no other questions or comments from the public, the Board or the applicant, Boness made a motion to waive a site view and close the public hearing. Bargnesi seconded the motion and the Board voted (4-0) to waive the view and close the hearing. The Board then proceeded to deliberate. Bargnesi made a motion to approve the proposed draft decision with the changes discussed tonight: page 2 5<sup>th</sup> paragraph – school year dates, page 3 change wording to reflect tonight's proceedings (Brown will update) and to accept the findings and conditions as presented in the draft except striking condition #16. Boness amended the motion to make a 6' stockade or other solid fence depicted on the site plan a condition. Boness seconded the motion, as amended, and the Board voted (4-0) to approve the comprehensive permit. Brown will finalize the decision.

Petition No.: 4061

Premises affected: 1 Napier Rd

Petitioner: McCarron

Members: Brown, McDonough, Bargnesi, Boness, Oltman

Diane McCarron, owner, represented herself in her request for a variance from Art. VIII, Section 4.2.4 to install an in-ground swimming pool that will not meet the minimum rear yard depth requirement. The premises are a corner lot with wetlands, a sewer line and access easement encumbering the possible locations for a pool. She has spoken with the immediate abutter, Merrimack College, and other abutters. They are in support of the variance. The lot is narrow and shallow with a 30' rear yard depth. The proposed pool is 16'x38'. The proposed setback will be: 8.2' from the pool to the house, 5.8' from the pool to the rear lot line. McCarron stated that ideally she'd like a 3' setback, but 4' is ok. This proposal is similar to the pools at 11 High St., Walnut Ave and others. The proposed fence will be inside the lot line and the concrete apron around the pool will likely be right up to the fence. The rear yard is flat before it slopes off to

the left steeply toward an intermittent stream. McCarron informed the Board that she has been before the Conservation Commission that approved an 81' setback to the wetland. There being no other question or comments from the Board or the public, McDonough made a motion to waive the site view and close the public hearing. Oltman seconded the motion and the Board voted (5-0) to waive the site view and close the hearing. The Board then proceeded to deliberate. Boness noted the minimal impact on the immediate abutter, but voiced concern over variances for pool setbacks. Brown commented that the proposal is reasonable and the wetlands present a topographical hardship related to soil, noting that no opposition was presented to the Board. He feels it can be done with a stipulation that the pool be no closer than 5' to the rear lot line. Bargnesi made a motion to approve the variance due to the hardship of topography / soil conditions relative to the wetlands with the condition that the pool be located no closer than 5' to the rear lot line. Oltman seconded the motion and the Board voted (4-1) (McDonough opposed) to grant the variance with conditions. Bargnesi will write the decision.

Petition No.: 4059

Premises affected: 4 Whittemore Terrace

Petitioner: Kobelski

Members: Brown, McDonough, Bargnesi, Boness, Oltman

Mrs. Lorri Kobelski represented herself and her husband in their request for a variance from 4.1.2 to construct an enclosed entry over an existing bulkhead and foundation that will not meet the minimum side yard depth requirement of 20' for the SRA district. Mrs. Kobelski has spoken with one neighbor while the builder has spoken with the others. There is no known objection to the proposal. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the public hearing. Boness seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate. Brown noted that the encroachment of the proposed 16.5' setback as opposed to the 20' required is minimal. McDonough added that it will be built over the existing bulkhead foundation and she has no issue with the proposal. Bargnesi stated the hardship is related to the shape of the lot and the location of the house on the triangular lot. McDonough made a motion to grant a variance from 4.1.2 with the hardship related to the shape of the lot with the condition that the entry is constructed in conformance with the plans submitted. Bargnesi seconded the motion and the Board voted (5-0) to grant the variance with condition. McDonough will write the decision.

Petition No.: 4062

Premises affected: 42 Walnut Street

Petitioner: Earl & Elledge

Members: Brown, McDonough, Bargnesi, Boness, Oltman

Architect Carla Morelli, and owner, Amy Earl, were present to request for a special permit to add a 2<sup>nd</sup> floor dormer to increase the head room in order to meet code for a new bathroom. The lot is non-conforming and the house was built in 1910 with a side setback of 4'. They went to Preservation Commission on 10/8/13 for review, but have not received anything in writing. Jeff Hall, 40 Walnut Ave, stated he is not opposed to the proposal. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the public hearing. Oltman seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate. Brown noted that the house was built in 1910, pre-dating zoning and the proposal is to expand the building envelope within the restricted side yard area, therefore a special permit under 3.3.5 is appropriate. McDonough agreed and made a motion to grant a special permit under 3.3.5 finding that it is in keeping with the character of the neighborhood with the condition that it be constructed in conformance with the design and plan

submitted with the application. Boness seconded the motion and the Board voted (5-0) to grant the special permit with condition. Brown will write the decision.

Petition No.: 4063

Premises affected: 48 Summer Street

Petitioner: Jeffco

Members: Brown, McDonough, Bargnesi, Boness, Oltman

Attorney Mark Johnson, 12 Chestnut St, Andover, was present with George Hughes, of Jeffco, and Bill MacLeod, engineer, to request a variance from Art. VIII, Section 5.1.13.1 (off-street parking requirements) and special permits under Art. VIII, Sections 3.3.2, 3.3.5 & 3.3.7. The existing 2-family home, built in approximately the 1840's, is located in the SRA district on Map 21, Lot 105. The proposal is to raze the existing structure and build a new 2-family structure with 2 detached garages. Johnson stated that they do not feel that the variance for parking is necessary, but were advised by the Inspector of Buildings to include it in the application. MacLeod gave an overview of the project: it is a corner lot (Summer St and Washington Ave); the new structure meets the average setback of the buildings within 200' on either side; and the Inspector of Buildings agrees it does not need relief for the front/side/rear setbacks - the rear yard is the easterly side opposite Washington St and the side yard is the northerly side. One parking space was added next to the garage on the easterly side, so that each unit has 1 garage parking space and one space in the driveway. The detached garages conform to the 5' setback. The Building Inspector has determined that the southerly garage is in the rear yard. MacLeod pointed out the note regarding average setbacks on the plan submitted with the packet.

The proposal has been reviewed by Preservation Commission and found to be in character with the neighborhood. McDonough asked for the square footage of the existing and proposed dwellings, including the footprints. MacLeod did not have that information available. Johnson argued that it is not necessary to provide the square footage since the proposed structure complies with setbacks. Brown asked why they filed as Party Aggrieved for review of the Inspector of Buildings' denial of a building permit. Johnson explained that the proposal conforms to the bylaw except as to lot area and that under Section 3.3.5; the Inspector can issue a building permit without sending them to the Zoning Board, such as in this case. Johnson argued that there is no increase in the non-conforming nature, the proposed structure meets setbacks, and therefore the Inspector is incorrect in not issuing a building permit. Section 3.3.5 allows reconstruction if there is no increase in the non-conforming nature of the structure. In this case, the existing structure doesn't conform to setbacks while the proposed structure does conform. In the alternative, Johnson suggested that special permits under 3.3.5 and 3.3.7 can be granted by the ZBA.

Brown questioned the 2-family use – whether the house was built as such or subsequently modified. Johnson referred to ZBA Decision No. 802 (1967) in which it appears the structure containing the store already existed and the Board allowed the store to be converted to an apartment, thus creating two units. He added that the house was built about 1843. The Board discussed the current configuration of the structure, with Brown emphasizing that the prior conversion to a 2-family was allowed by variance, which does not legally establish a non-conforming use. He outlined two issues: does the structure meet dimensional requirements and is the 2-family use allowed to continue? The Board discussed the definition of reconstruction and how/whether this applies to the proposed demolition and reconstruction of an existing 2-family allowed by special permit. Johnson argued that Section 3.3.5 allows for single and 2-family to be reconstructed. Brown cited the Gifford v. Nantucket case regarding reconstruction. Johnson added that Section 3.3.7 includes demolition.

Pat O'Neil, 49 Summer St., asked about the design and materials. Bruce Reynolds, son-in-law of the owners of 50 Summer St., voiced concern on their behalf regarding the size of the proposed building and decreased privacy. He asked

that the garage on Summer Street be pushed back in line with the proposed structure. He was also concerned about increased water problems with run-off. MacLeod explained that the rear yard would be lost if the garage were to be moved back, reiterating that it complies with setbacks. He commented that existing water issues are due to ground water rising and that the construction will not increase roof run-off, but rather it will drain into the street. Mr. Reynolds requested a hydrology report.

Bob Ganley, 42 Washington Ave., stated that he likes the proposal, but is concerned about the increased volume (1 ½ to 2 stories) and the regrading of the lot as well as a 16.5' high garage casting shadows onto his lot. Ted Harris, 56 Summer St., commented that the Summer Street garage being the closest to the street.

The Board discussed matters related reconstruction, the increase in volume and whether or not, if the structure allowed by special permit to be a 2-family is razed, the 2-family use could continue. Boness agreed with the Inspector that the proposal is not reconstruction. Johnson argued that Section 3.3.5 does not talk about reconstruction of what exists, but compliance with setbacks, and that if the new structure is larger, it is not an issue. Brown noted that the three scenarios in Section 3.3.5 refer to specifically to alteration, not to reconstruction.

The Board asked for the following information and documentation to be considered for the December 5<sup>th</sup> meeting: case law for matters similar to this proposal; a letter from Preservation Commission; drawings with a title block including the preparer's name and date. The Board requested that the garage facing Summer Street pushed back, and requested information on the height of the proposed structure, a run-off plan, and the calculations for Section 3.3.7 (square footage, volume, etc.). McDonough made a motion to continue the public hearing to 12/5/13. Oltman seconded the motion and the Board voted (5-0) to continue the hearing to 12/5/13. The Board will ask the Inspector of Buildings to attend.

Petition No.: 4060

Premises affected: 165 Haverhill Street

Petitioner: YMCA

Members: Brown, McDonough, Bargnesi, Boness, Oltman

Rick Feldman, YMCA Rep., was present to request modifications of Decision Nos. 965 & 2618 to construct additions to a building in use by a charitable organization (YMCA). The expansion will include 44,000 sq ft. of net space for a 1 story small childcare center at the front, a larger 2½ story addition to the right for a pool, senior center and physical therapy area, plus additional parking for 139 cars. They have started the process with the Planning Board and Conservation Commission. In 1971, the ZBA granted a special permit for the use in the SRB district, which use has continued uninterrupted. There is no request for a variance for setbacks. Decision No. 965 had a condition that the building was to be constructed in conformance with the plans submitted at the time. Decision No. 2618 was for a sign on Haverhill Street. No signage is included in the current application; therefore a modification of #2618 is unnecessary. The Board discussed the proposed height (35') and that the proposal conforms to all dimensional requirements. Only the use is non-conforming.

Dan Hayes, Attorney at 32 Chestnut St., Andover, spoke for the applicant relative to the Dover Amendment protecting the use. There being no other questions or comments from the Board or the public, McDonough made a motion to waive a site view and close the public hearing. Oltman seconded the motion and the Board voted (5-0) to waive the view and close the hearing. The Board then proceeded to deliberate. Brown stated that the modification of Decision No. 965 is to remove the condition referencing conformity to the plans submitted at that time and to make reference to the current plans. McDonough made a motion to grant the modification of Decision No. 965 to refer to the new plans

for the proposed additions / alterations and to dismiss the requested modification of Decision No. 2618. Bargnesi seconded the motion and the Board voted (5-0) to grant the modification of Dec. No. 965 and dismiss the request to modify Dec. No. 2618. Attorney Hayes agreed to draft and submit narrative language describing the proposed construction. Brown will write the decision.

Petition No.: 3803

Premises affected: 0 and 86 River Street

Petitioner: Taylor Cove

Members: Brown, McDonough, Bargnesi, Boness, Oltman

McDonough made a motion to waive the reading of the public hearing notice. Oltman seconded the motion and the Board voted (5-0) to waive the reading. Attorney Don Borenstein, of Johnson & Borenstein, 12 Chestnut St., Andover was present on behalf of the applicant. He gave an overview of the 40B project that is currently under construction, consisting of 32 town homes, including 8 affordable units. At the 10/16/13 ZBA meeting, the Board voted to find as substantial a proposed change to the project that would offer a unit upgrade to 3 of the unit types, increasing the floor area of the 1<sup>st</sup> floor to include either a master bedroom or one of two possible entertainment room expansions. This could be an option for a maximum of 17 of the market-rate units. It will increase the value of the units, increase taxes and revenue for the Town, increase the market to older buyers, and decrease the number of school-aged children in the project. The Board asked if the proposed change will increase the number of bedrooms project-wide. It will not; each unit will remain 3 bedrooms. It will increase the diversity of the market appeal for buyers. The Board voiced concern that this upgrade is not available for affordable units emphasizing that the 40B/DHCD standard states that market rate and affordable units have to be undistinguishable and blend into the project. Borenstein noted that the exterior is unchanged save for the bump-out at the rear and the same materials will be used; that the units do not have to be identical. While all the affordable units have garages, none have a 2 car garage, which is a distinguishable difference.

Todd Wacome, of Taylor Cove, informed the Board that only 16 units would be eligible for the upgrade since one foundation has already been put in. The upgrades will not be built on spec, according to Wacome. The Board discussed the distribution and location of the affordable units throughout the site, noting that only one affordable unit is in a building that doesn't have the upgrade option. Brown asked how this proposal addresses or meets the community need for affordable housing. If not allowed, will it render the project uneconomic? If allowed, how does it change the project's economics? Borenstein stated that any profit over 20% goes to the Town. Brown asked if the upgrade option create a significant inequality that wasn't present before and if these changes are consistent with Mass Housing's needs? Borenstein informed the Board that Mass Housing will give a formal approval once the ZBA finalizes a decision, adding that he may be able to get a letter of support. McDonough asked if the only expansion is on the first floor. Borenstein explained that the second floor is expanded too. Brown voiced concern with the plans depicting a loft space on the second floor and a study, both of which can potentially be used as sleeping areas. Boness and McDonough agreed.

Joe Pagorski, 5 Charlotte Drive, voiced concern with the modification of the approved plans and how many bedrooms are in each unit and how use of the other areas could be monitored.

McDonough made a motion to continue the public hearing to 12/5/13 Bargnesi seconded the motion and the Board voted (5-0) to continue the hearing to 12/5/13.

There being no other business, the Board adjourned the meeting at 10:05 p.m.